



## **Appendix G – Programmatic Agreement**

# **PROGRAMMATIC AGREEMENT**

## **AMONG**

**FEDERAL HIGHWAY ADMINISTRATION  
ARIZONA STATE HISTORIC PRESERVATION OFFICE  
ARIZONA DEPARTMENT OF TRANSPORTATION  
BUREAU OF LAND MANAGEMENT  
ARIZONA STATE LAND DEPARTMENT  
THE HOPI TRIBE  
THE SAN CARLOS APACHE TRIBE  
THE WHITE MOUNTAIN APACHE TRIBE  
THE YAVAPAI PRESCOTT TRIBE  
THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY  
ARIZONA STATE MUSEUM**

**REGARDING DATA RECOVERY AT ARCHAEOLOGICAL SITES ALONG  
INTERSTATE 17 BETWEEN STATE ROUTE 101 AND THE NEW RIVER TRAFFIC  
INTERCHANGE  
INTERSTATE 17; MILEPOSTS 214 TO 233  
PROJECT NO. NH-017-A(874)  
TRACS NO. 017 MA 214 H5162 01L  
MARICOPA COUNTY, ARIZONA**

**WHEREAS**, the Federal Highway Administration (FHWA) proposes to widen a portion of Interstate 17 (I-17), a federally-funded project in Maricopa County, Arizona (hereafter referred to as "the Project"); and

**WHEREAS**, the area of potential effect for the project is defined as the existing roadway right-of-way (ROW) on I-17 between mileposts 214 and 233 as well as new ROW, yet to be determined; and

**WHEREAS**, project construction will occur on land owned by the Arizona Department of Transportation (ADOT) and ADOT easement across public land administered by the Bureau of Land Management (BLM), Arizona State Land Department (ASLD), and ADOT, acting as agent for FHWA, has participated in consultation; and

**WHEREAS**, the proposed project may have an adverse effect upon AZ T:4:192(ASM), AZ T:4:337(ASM), AZ T:4:346(ASM), and AZ T:4:330(ASM), AZ T:4:331 (ASM), AZ T:4:338(ASM), AZ T:4:349(ASM), AZ T:8:153(ASM), AZ T:8:157(ASM) and AZ T:8:158(ASM), archaeological sites which are eligible or may be eligible for listing on the National Register of Historic Places and may possibly have effects to unidentified subsurface archaeological resources; and

**WHEREAS**, ADOT, acting as agent for FHWA has participated in consultation and has been invited to be a signatory to this Programmatic Agreement (Agreement); and

**WHEREAS**, the FHWA has consulted with the Arizona State Historic Preservation Office (SHPO), the BLM, ASLD, and the Advisory Council on Historic Preservation (the Council) in accordance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR §800.6(b)(2)) to resolve the possible adverse effects of the Project on historic properties; and

**WHEREAS**, SHPO is authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under A.R.S. § 41-511.04(D)(4); and

**WHEREAS**, the Indian Tribes that may attach religious or cultural importance to affected properties have been consulted [pursuant to 36 CFR § 800.2 (c)(2)(ii)(A-F)], and the Hopi Tribe, the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Yavapai Prescott Tribe, the Salt River Pima Maricopa Indian Community have been invited to be concurring parties in the Agreement; and

**WHEREAS**, in their role as lead federal agency, FHWA has consulted with the Arizona State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as revised in 2000; and

**WHEREAS**, by their signature all parties agree that the regulations specified in the ADOT document, "ADOT Standard Specifications for Road and Bridge Construction" (Section 104.12, 2000) will account for the cultural resources in potential commercial material sources used in project construction; and

**WHEREAS**, an agreement regarding the treatment and disposition of Human Remains, Associated Funerary Objects, and Objects of Cultural Patrimony would be developed for the Arizona State Museum (ASM) for state and private land; and

**WHEREAS**, Human Remains and Associated Funerary Objects recovered will be treated in accordance with the Native American Graves and Protection Repatriation Act (NAGPRA); and

**WHEREAS**, the data recovery necessitated by the Project must be permitted by the Arizona State Museum pursuant to A.R.S. § 41-842; and

**NOW, THEREFORE**, all parties agree that upon FHWA's decision to proceed with the Project, FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this PA expires or is terminated.

## Stipulations

FHWA will ensure that the following measures are carried out.

### 1. Development of a Geotechnical Monitoring Plan

Should geotechnical investigations adversely impact any of the above-referenced archaeological sites, a geotechnical monitoring plan will be developed.

The geotechnical monitoring plan will be submitted by ADOT, on behalf of FHWA, to all parties to this Agreement for 30 calendar days' review. Unless any signatory or concurring party objects to the geotechnical monitoring plan within 30 calendar days after receipt of the plan, FHWA shall ensure that it is implemented.

ADOT, on behalf of FHWA, will submit a letter report briefly describing geotechnical monitoring activity and subsurface cultural deposits encountered to all parties to this Agreement for 30 calendar days' review.

### 2. Development of a Data Recovery Work Plan

The data recovery plan will be submitted by ADOT, on behalf of FHWA, to all parties to this Agreement for 30 calendar days' review. The data recovery plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37). Unless any signatory or concurring party objects to the data recovery plan within 30 calendar days after receipt of the plan, FHWA shall ensure that it is implemented prior to construction.

### 3. The Data Recovery Work Plan (the Work Plan) will specify:

- a) The properties or portions of properties where data recovery is to be carried out. Also, it will specify any property or portion of property that would be destroyed or altered without treatment;
- b) The results of previous research relevant to the project, the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- c) The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
- d) The methods to be used in analysis, data management, and dissemination of data to the professional community and the public, including a proposed schedule for project tasks, including a schedule for the submission of draft and final reports to consulting parties;
- e) The proposed disposition and curation of recovered materials and records in accordance with 36 CFR 79;

- f) Procedures for monitoring, evaluating and treating discoveries of unexpected or newly identified properties during construction of the project, including consultation with other parties;
  - g) A protocol for the treatment of human remains, in the event that such remains are discovered, describing methods and procedures for the recovery, analysis, treatment, and disposition of Human Remains, Associated Funerary Objects, and Objects of Cultural Patrimony. This protocol will reflect concerns and/or conditions identified as a result of consultations among parties to this Agreement.
4. Review and comment on the Geotechnical Monitoring Work Plan and Data Recovery Work Plan
- a) Upon receipt of a draft of the Work Plans, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the plan.
  - b) If revisions to the Work Plans are made all consulting parties have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the plan or report.
  - c) Once the Data Recovery Plan is determined adequate by all parties (with SHPO concurrence), FHWA shall issue authorization to proceed with the implementation of the Plan, subject to obtaining all necessary permits.
  - d) Final drafts of the Data Recovery Plan will be provided to all consulting parties.
5. Review and Comment on Preliminary Report of Findings
- a) Upon completion of fieldwork, the institution, firm, or consultant responsible for the work will prepare and submit a brief Preliminary Report of Findings.
  - b) Upon receipt of a draft of the Work Plans, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the plan.
  - c) If revisions to the Preliminary Report of Findings are made, all consulting parties have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the plan or report.

- d) Once the Preliminary Report of Findings has been accepted as a final document, ADOT, on behalf of FHWA, will notify appropriate project participants that construction may proceed.

#### 6. Review and Comment on Data Recovery Report

- a) Within 180 days of completion of data recovery, a report will be prepared incorporating all appropriate data analyses and interpretations, and the report will be submitted to signatories and concurring parties who will be provided with 30 calendar days to review and comment upon the data report.
- b) Upon receipt of the data recovery report, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the plan.
- c) If revisions to the data recovery report are made, all consulting parties have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the plan or report.
- d) Once the data recovery report has been accepted as a final document, ADOT, on behalf of FHWA, will notify appropriate project participants that construction may proceed.

#### 7. Standards for Monitoring and Data Recovery

All historic preservation work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).

#### 8. Curation

All materials and records resulting from the data recovery program conducted within the Project area shall be curated in accordance with standards 36 CFR 79 and guidelines generated by ASM. The repository for materials either will be ASM or one that meets the standards and guidelines in Maricopa County. Materials subject to repatriation under A.R.S. § 41-844 and A.R.S. § 41-865 shall be maintained in accordance with the burial agreement until any specified analyses, as determined following consultation with the appropriate Indian tribes and individuals, are complete and the materials are returned.

#### 9. Additional Inventory Survey

ADOT, on behalf of FHWA, in consultation with all parties to this agreement shall ensure that new inventory surveys of additional rights-of-way and temporary construction easements will include determinations of eligibility that are made in accordance with 36 CFR § 800.4(c) for all historic properties, including any added staging or use areas. Should any party to this Agreement disagree with FHWA regarding eligibility, the SHPO shall be consulted and resolution sought within 20 calendar days. If the FHWA and SHPO disagree

on eligibility, FHWA shall request a formal determination from the Keeper of the National Register.

10. Objection by a Signatory or Concurring Party

Should any signatory or concurring party to this Agreement object within 30 days to any plan or report provided for review or to any aspect of this undertaking related to historic preservation issues, FHWA shall consult with the objecting party to resolve the objection. If the objection cannot be resolved, FHWA shall request further comments of the Council with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

11. Discoveries

If potential historic or prehistoric archaeological materials or properties are discovered after construction begins, the person in charge of the construction shall promptly report the discovery to the ADOT Historic Preservation Specialist, representing FHWA. If human or funerary objects are discovered, ADOT shall require construction to immediately cease within the area of the discovery, take steps to protect the discovery, and notify and consult with appropriate Native American groups to determine treatment and disposition measures in accordance with the previously implemented burial agreement. The Director of the ASM (the Director) shall also be informed. In consultation with the Director and ADOT, on behalf of FHWA, the person in charge of construction shall immediately take steps to secure and maintain preservation of the discovery. If the discovery appears to involve Human Remains as defined in ASM rules implementing A.R.S. § 41-844 and 41-865, ASM and FHWA shall ensure that the discovery is treated according to the burial agreement.

If Human Remains are not involved, then the ADOT Historic Preservation Specialist shall evaluate the discovery, and in consultation with FHWA and SHPO, determine if the Plan previously approved by ASM according to Stipulation 2 is appropriate to the nature of the discovery. If appropriate, the Plan shall be implemented by ADOT, on behalf of FHWA. If the Plan is not appropriate to the discovery, FHWA shall ensure that an alternate plan for the resolution of adverse effect is developed pursuant to 36 CFR § 800.6 and circulated to the consulting parties, who will have 48-hours to review and comment upon the alternate plan. FHWA shall consider the resulting comments, and shall implement the alternate plan once a project specific permit has been issued.

12. Amendments

This Agreement may be amended by the signatories pursuant to 36 CFR § 800.6 (c) (7). FHWA shall file any amendments with the Council and provide notice to the concurring parties.

13. Termination

Any signatory may terminate the Agreement by providing 30 day written notification to the other signatories. During this 30 day period, the signatories may consult to seek agreement on amendments or other actions that would avoid termination pursuant to 36 CFR § 800.6 (b). If the parties cannot agree on actions to resolve disagreements, FHWA will comply with 36 CFR § 800.7(a).

14. In the event the FHWA or ADOT cannot carry out the terms of this agreement, the FHWA will comply with 36 CFR § 800.3 through 800.6.
15. There shall be an annual meeting among FHWA, SHPO, and ADOT to review the effectiveness and application of this agreement, to be held on or near the anniversary date of the execution of this agreement.
16. Equal Opportunity/Non-Discrimination: The Parties agree to comply with Chapter 9, Title 41, Arizona Revised Statutes (Civil Rights), Arizona Executive Order 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.
17. Records: Pursuant to A.R.S. et seq. 35-214, 35-215 and 41-2548, all books, accounts, reports, files and other records relating to this Agreement shall be subject, at all reasonable times, to inspection and audit by the State for five years after the termination of this Agreement.
18. Conflict of Interest: This Agreement is subject to cancellation by the State under A.R.S. et seq. 38-511 if a person significantly involved in the Agreement on behalf of the State is an employee or consultant of the contractor at any time while the Agreement or any extension of the Agreement is in effect.
19. Non-Availability of Funds: This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State to expenditures in excess of funds authorized and appropriated for the purposes outlined in this Agreement.
20. Arbitration: To the extent required by A.R.S. §§ 12-1518(B) and 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration.

This agreement shall be null and void if its terms are not carried out within ten (10) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.



Execution of this Agreement by the signatories and its subsequent filing with the Council is evidence that the Federal Highway Administration has afforded the Advisory Council on Historic Preservation an opportunity to comment on the I-17 widening project and its effects on historic properties, and that the Federal Highway Administration has taken into account the effects of the undertaking on historic properties.

## SIGNATORIES

### FEDERAL HIGHWAY ADMINISTRATION

By Steph D. Thomas  
Title Environmental Program Manager

Date 7/14/03

### ARIZONA STATE HISTORIC PRESERVATION OFFICER

By James G. Givens  
Title ASHPU

Date 7/15/03

## INVITED SIGNATORIES

### ARIZONA DEPARTMENT OF TRANSPORTATION

By Jeffrey J. Wang  
Title Environmental Group Manager

Date 6/17/03

## CONCURRING PARTIES

### BUREAU OF LAND MANAGEMENT

By \_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_

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##### FEDERAL HIGHWAY ADMINISTRATION

By Steph D. Thomas

Date 7/14/03

Title Environmental Program Manager

##### ARIZONA STATE HISTORIC PRESERVATION OFFICER

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

#### INVITED SIGNATORIES

##### ARIZONA DEPARTMENT OF TRANSPORTATION

By Tommy J. May

Date 6/17/03

Title Environmental Group Manager

#### CONCURRING PARTIES

##### BUREAU OF LAND MANAGEMENT

By Kathryn E. Bednick

Title Acting Field Manager

Date 7/17/03

ARIZONA STATE LAND DEPARTMENT

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

HOPI TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

SAN CARLOS APACHE TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

WHITE MOUNTAIN APACHE TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

YAVAPAI PRESCOTT TRIBE

By *G. Ernest Jones*

Date 7/1/03

Title President

SALT RIVER PIMA MARICOPA INDIAN COMMUNITY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

ARIZONA STATE MUSEUM

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

ARIZONA STATE LAND DEPARTMENT

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WHITE MOUNTAIN APACHE TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

YAVAPAI PRESCOTT TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

SALT RIVER PIMA MARICOPA INDIAN COMMUNITY

By Jim M. Romero

Date 9/10/03

Title President

APPROVED AS TO FORM:

Charles H. Guen  
OFFICE OF THE STAFF ATTORNEY

ARIZONA STATE MUSEUM

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

ARIZONA STATE LAND DEPARTMENT

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

HOPI TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

SAN CARLOS APACHE TRIBE

By \_\_\_\_\_

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WHITE MOUNTAIN APACHE TRIBE

By \_\_\_\_\_

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YAVAPAI PRESCOTT TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

SALT RIVER PIMA MARICOPA INDIAN COMMUNITY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

ARIZONA STATE MUSEUM

By 

Date Sept 15/03

Title Permits Administration

For H.L. Director ASM